No. 16-980

FILED
SEP 22 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RECORD AND BRIEFS

IN THE

# Supreme Court of the United States

JON HUSTED, OHIO SECRETARY OF STATE,

*Petitioner,*

*v.*

A. PHILIP RANDOLPH INSTITUTE, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND THE OHIO STATE CONFERENCE OF THE NAACP IN SUPPORT OF RESPONDENTS

MARTIN L. SAAD
KATHLEEN K. SHERIDAN
JOHN C. VAZQUEZ
CHRISTOPHER N. MORAN
VENABLE LLP
600 Massachusetts Avenue, NW
Washington, DC 20001
(202) 344-4000

GILDA R. DANIELS
*Counsel of Record*
JUDITH BROWNE DIANIS
DONITA JUDGE
EILEEN MA
ANDREW HAIRSTON
ADVANCEMENT PROJECT
1220 L Street, NW, Suite 850
Washington, DC 20005
(202) 728-9557
gdaniels@advancementproject.org

*Counsel for Amici Curiae*
*(Additional Counsel Listed on Signature Page)*

September 22, 2017

## TABLE OF CONTENTS

*Page*

TABLE OF CONTENTS ..... i

TABLE OF CITED AUTHORITIES ..... iv

IDENTITY AND INTEREST OF *AMICI CURIAE* ..... 1

INTRODUCTION AND SUMMARY OF ARGUMENT ..... 2

ARGUMENT ..... 6

I. OHIO'S SUPPRESSIVE VOTER TACTICS DENY THE RIGHT TO VOTE ..... 6

A. History of Voter Suppression in Ohio ..... 6

1. Voter Challenges ..... 7

2. Long Lines and Poll Worker Error ..... 7

3. Golden Week ..... 8

4. Provisional Ballots ..... 10

5. Other Election Administration Errors ..... 11

*Table of Contents*

*Page*

B. Ohio's History of Suppressive Voting Measures Has Led to Decreased Voter Engagement and Inactive Voters .....12

1. A Decline in Black Voter Participation in Ohio in 2016 Reflects the Impact of Voter Suppression.....13

2. Disenfranchisement Results in Low Voter Participation Rates in Communities of Color .....14

II. OHIO'S SUPPLEMENTAL PROCESS HAS A DISPROPORTIONATE IMPACT ON BLACK VOTERS .....17

A. Ohio's Supplemental Process Has Disproportionately Purged Voters of Color from Registration Rolls.....17

B. Ohio's Supplemental Process Is Based on a Faulty Correlation Between Voter Inactivity and Voter Change of Address .....19

C. The Supplemental Process's Mail Response Requirement Disproportionately Places Voters of Color on the Inactive List.....21

*Table of Contents*

*Page*

III. OHIO IS NOT ALONE IN ITS VIOLATION OF THE NVRA.....23

CONCLUSION .....26

## TABLE OF CITED AUTHORITIES

*Page*

**CASES**

*A. Philip Randolph Inst. v. Husted*,
838 F.3d 699 (6th Cir. 2016).....4, 5

*Common Cause and Georgia NAACP v. Kemp*,
No. 17-11315 (11th Cir. June 5, 2017) .....24

*Common Cause of Colo. v. Buescher*,
750 F. Supp. 2d 1259 (D. Colo. 2010) .....4

*League of Women Voters of Ohio v. Brunner*,
548 F.3d 463 (6th Cir. 2008) .....3, 7, 10, 12

*NC NAACP v. McCrory*,
831 F.3d 204 (4th Cir. 2016).....2

*NEOCH v. Husted*,
696 F.3d 580 (6th Cir. 2012) .....10

*Northeast Ohio Coalition for the Homeless v. Husted*,
837 F.3d 612 (6th Cir. 2016).....3

*Obama for America v. Husted*,
697 F.3d 423 (6th Cir. 2012) .....3, 8

*Ohio Democratic Party v. Husted*,
834 F.3d 620 (6th Cir. 2016).....3

*Cited Authorities*

*Page*

*Ohio State Conference of the NAACP v. Husted*,
768 F.3d 524 (6th Cir. 2014), *vacated as moot*,
2014 WL 10384647 (6th. Cir. Oct. 1, 2014). . . . . .2, 7, 9

*Reynolds v. Sims*,
377 U.S. 533 (1962). . . . . .2

*South Carolina v. Katzenbach*,
383 U.S. 301 (1966). . . . . .3

*State ex rel. Painter v. Brunner*,
128 Ohio St. 3d 17, 941 N.E. 2d 782 (2011) . . . . . .10

*Summit Cty. Democratic Cent. & Exec. Comm. v. Blackwell*,
388 F.3d 547 (6th Cir. 2004) . . . . . .7

*Texas NAACP v. Steen*,
71 F. Supp. 3d 627 (S.D. Tx. 2014) . . . . . .3

*United States v. Ortiz*,
897 F. Supp. 199 (E.D. Pa. 1995) . . . . . .23

**STATUTES AND OTHER AUTHORITIES**

U.S. Const. amend. XV. . . . . .6

52 U.S.C. § 20501. . . . . .4

2005 Ohio Laws 40 (Sub. H.B. 234). . . . . .8

*Cited Authorities*

*Page*

Act of Apr. 16, 1868, § 1, 1868 Ohio Gen. & Loc. Laws 1st Sess. 97 (L.D. Myers & Bro. 1868) .....6

Alice Miranda Ollstein and Kira Lerner, Think Progress, *"Republicans were wildly successful at suppressing voters in 2016"* (Nov. 15, 2016).....13

*America Goes to the Polls 2014*, Nonprofit Vote . . .20, 21

Andy Sullivan and Grant Smith, *Use it or Lose it: Occasional Ohio Voters May Be Shut Out in November*, Reuters (June 2, 2016).....18

Billy Corriher and Liz Kennedy, Ctr. for Am. Progress, *Preventing Problems at the Polls: Ohio* (Oct. 11, 2016) .....12

Darrel Rowland, *Voting in Ohio | Fight over poll hours isn't just political*, The Columbus Dispatch (Aug. 19, 2012) .....9

Earl Letourneau, U.S. Census Bureau, Mail Response/Return Rates Assessment (2012).....22

Emily Badger, *Why Long Voting Lines Could Have Long-Term Consequences*, N.Y. Times (Nov. 8, 2016).....12-13

Emily L. Mahoney, Hillary Davis, and Jimmy Miller, Ctr. for Public Integrity, *America Scrubs Millions from the Rolls. Is it Fair?* (Aug. 22, 2016).....38

*Cited Authorities*

*Page*

H.R. Rep. No. 103-9 (1993) ..... 4

Hannah Yi, Mori Rothman and Chris Bury, PBS Newshour, *Why Ohio has purged at least 200,000 from the voter rolls* (July 31, 2016) ..... 19

Hawaii Rev. Stat. §11-12 (2016) ..... 25

Hawaii Rev. Stat. §11-17 ..... 25

Jackie Borchardt, *Ohio lawmaker wants the state to stop purging inactive voters*, Cleveland.com (Dec. 2, 2015) ..... 23-24

Jens Manuel Krogstad and Mark Hugo Lopez, Pew Research Ctr.: Fact Tank, *Black Voter Turnout Fell in 2016, Even as a Record Number of Americans Cast Ballots* (May 12, 2017) ..... 15

Jens Manuel Krogstad, Pew Research Ctr., *Asian American voter turnout lags behind other groups; some non-voters say they are 'too busy'* (Apr. 9, 2014) ..... 16

John P. Bueker, *Jury Source Lists: Does Supplementation Really Work?*, 82 CORNELL L. REV. 390 (1997) ..... 23

Joshua Field, Charles Posner, and Anna Chu, Ctr. for Am. Progress, *Uncounted Votes: The Racially Discriminatory Effects of Provisional Ballots* (Oct. 2014) ..... 12

*Cited Authorities*

*Page*

Kristen Taylor & Alexandra Eichler, *Voting Problems in Ohio, Texas According to Election Protection Volunteers*, Huffington Post (Nov. 6, 2012).....11

Lauren Harmon, Charles Posner, Michele Jawando, and Matt Dhaiti, Ctr. for Am. Progress Action Fund, *The Health of American Democracies* (July 2015) .....12

Michael P. McDonald, *2012 Turnout: Race, Ethnicity and the Youth Vote*, Huffington Post (July 8, 2013) .....14

Michael Powell and Peter Slevin, *Several Factors Contributed to 'Lost' Voters in Ohio*, Wash. Post (Dec. 15, 2004) .....10, 11

Nathan Eagle, *Should Hawaii Purge More People from List of Registered Voters?* Civil Beat (Oct. 20, 2014).....25

O.G.C.A. § 21-2-233 .....24

O.G.C.A. § 21-2-234(a).....24

Ohio Rev. Code § 3503.21(A)(7).....5

Ohio Rev. Code § 3503.21(B) .....5

Ohio Rev. Code § 3505.20.....6

*Cited Authorities*

*Page*

Ohio Rev. Code § 3509.01(B)(2) .....9

Ohio Rev. Code § 3509.01(B)(3) .....9

Ohio Rev. Code § 3509.05(A) .....8

Ohio Rev. Code § 3509.32 .....12

Ohio Sen. Nina Turner and Ohio Rep. Kathleen Clyde, *Voter Suppression in Ohio in the November 2012 Election* (June 5, 2013).....11

Peter S. Canellos, *In Prosecuting Federal Crime, Jury Pool can be an Issue of Race*, Boston Globe (Sept. 20, 2005) .....23

Robert Walters and Mark Curriden, *A Jury of One's Peers?: Investigating Underrepresentation in Jury Venires*, 43 Judges' Journal (2004).....22

Summit County Board of Elections Challenge Hearings, Oct. 28, 2004, Tr. 72:23-73-12.....7

Sup. Ct. R. 37.2 .....1

T.C.A. §2-2-106(c) (2010) .....24

*Tea Party Group Works to Remove Names from Ohio Voter List*, LA Times (Sept. 26, 2012) .....7

*Cited Authorities*

*Page*

Ted Eades, *Revisiting the Jury System in Texas: A Study of the Jury Pool in Dallas County*, 54 SMU L. REV. 1813 (2001) .....23

*The Other Side: Lot Wright Shows How the Negroes Were Frightened from the Polls*, Fort Worth Daily Gazette (Jan. 16, 1885) .....6

Thom File, U.S. Census Bureau, *Voting in America: A Look at the 2016 Presidential Election* (May 10, 2017) .....13, 15

Thom File, U.S. Census Bureau, *Who Votes? Congressional Elections and the American Electorate: 1978-2014* (July 2015) .....17

U.S. Census Bureau, *Reported Voting and Registration by Sex, Race and Hispanic Origin; from States; U.S. Census Bureau, Current Population Survey* (Nov. 2016) .....16

U.S. Census Bureau, *Voting and Registration of the Election of November 2016* (May 2017) . . .15, 20, 21

U.S. Election Assistance Commission Report to the 114th Cong.: *The 2014 EAC Election Admin. and Voting Survey Comp. Rept.* (June 30, 2015) .....25

*Cited Authorities*

*Page*

Wendy Weiser & Margaret Chen, Brennan Center for Justice, *Voter Suppression Incidents in 2008* (Nov. 3, 2008).....11

William H. Frey, *Census Shows Pervasive Decline in 2016 Minority Voter Turnout*, Brookings Institution (May 18, 2017) .....13, 14

Zachary Roth, *After early voting cuts, Souls to the Polls takes a hit in Ohio*, MSNBC (Nov. 3, 2014).....9

Pursuant to Supreme Court Rule 37.2, the National Association for the Advancement of Colored People ("NAACP") and the Ohio State Conference of the NAACP ("OH NAACP") respectfully submit this *amici curiae* brief in support of Respondents in this matter.[1]

## IDENTITY AND INTEREST OF *AMICI CURIAE*

The NAACP is a non-profit organization founded on the goal of achieving an equitable society for African-Americans and communities of color. The right to vote is under constant threat of being diminished to a privilege instead of a guarantee to all United States citizens. Former Assistant Attorney General Deval Patrick's letter to the Senate Judiciary Committee on the nomination of Jeff Sessions to be Attorney General highlights the triumphs of past voting rights cases and emphasizes the danger when the "rule of law is imperiled." "Voting," as he writes, "is a civic and even sacred right in our country." The NAACP's core mission is to protect the right to vote, and the organization has spent all 108 years of its existence in pursuit of that goal.

The OH NAACP serves as the statewide arm of the NAACP, one of the country's oldest racial justice organizations. The OH NAACP works toward eliminating race-based discrimination and has done so for almost

---

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. The parties have filed blanket consents to the filing of all amicus briefs in this matter.

a century. Throughout its history, the OH NAACP has actively fought for voting rights, most recently and prominently in the 2014 case, *Ohio State Conference of the NAACP v. Husted*, 768 F.3d 524 (6th Cir. 2014), *vacated as moot*, 2014 WL 10384647, at *1 (6th. Cir. Oct. 1, 2014). The OH NAACP has invested significant resources in the efforts to expand American democracy and increase participation in the electoral process.

In Ohio, *amici* have worked arduously to fulfill the protections of the U.S. Constitution and ensure that the voices of Ohio's voters are heard at the polls. The organization is dedicated to securing the fundamental right to vote for those who have been historically silenced. *Amici* submit this brief to help the Court appreciate and understand the negative impact of Ohio's Supplemental Process and similar provisions in other states on the African American community and voters of color.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Despite centuries of struggle, the sacred right to vote continues to evade a large number of voters of color in the United States. As the Court has recognized, the right of suffrage is fundamental to a free and democratic society. *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1962). Although advances have been achieved in the fight to secure the right to vote for all citizens, the ability to participate fully in U.S. democracy still eludes far too many voters, particularly voters of color due to suppressive state tactics.[2] This Court has long recognized that racial

2. Recent examples include *NC NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (challenging voter suppression law passed

discrimination in the administration of elections is unconstitutional. *See, e.g., South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966). This denial of the right to vote is especially troubling, considering the various forms of physical violence that people of color have faced over the years in their attempts to register and vote. *See, e.g., Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612, 639-651 (6th Cir. 2016) (Keith, J., dissenting).

While overt acts of violence have been used historically to deny the vote, today more insidious means of restricting access to the ballot are common. Ohio has a long history of barriers to the ballot, as demonstrated by consistent cuts to same-day registration and early in-person ("EIP") voting. *See Ohio Democratic Party v. Husted*, 834 F.3d 620, 624 (6th Cir. 2016). Ohio has designed and fostered a system of voting that creates impermissible administrative barriers, such as long lines and unwarranted voter challenges that disproportionately impact voters of color. *See Obama for America v. Husted*, 697 F.3d 423, 425 (6th Cir. 2012) (affirming preliminary injunction preventing Ohio from cutting early voting). The United States Court of Appeals for the Sixth Circuit previously noted that during the 2004 election, Ohioans faced long lines and wait times, sometimes stretching into the early morning the following day. *Id.* at 426. In recent years, additional burdens that affect access to the ballot have emerged, such as poll worker errors and problems with provisional ballots. *See League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 478 (6th Cir. 2008).

---

by the North Carolina General Assembly), and *Texas NAACP v. Steen*, 71 F. Supp. 3d 627 (S.D. Tx. 2014) (ongoing challenge to a discriminatory voter ID law in Texas). *See also* http://brennancenter.org/legal-work/naacp-v-steen (summarizing the timeline of events and litigation related to *Steen*).

In response to these problems, Ohio adopted a promising measure called Golden Week, which greatly extended same day registration and early voting opportunities for Ohioans. *See NAACP*, 768 F.3d at 531. Black voters utilized the early voting allowed by Golden Week at higher rates than White voters. *Id.* at 534. In spite of the law's success, Ohio then eliminated Golden Week. Voting rights advocates challenged the state's action in an effort to preserve the program's monumental gains. *Id.* These barriers to voting in Ohio have chilled the vote in communities of color.

The National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20501 *et seq.*, sought to establish a system that extended the right to vote to Americans who had been previously shut out of the democratic process. Congress passed the NVRA with two priorities in mind: an assurance that as many citizens as possible could register and participate in federal elections, and an accurate maintenance of state voter rolls. *See A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 705 (6th Cir. 2016) ("*APRI*") (quoting *Common Cause of Colo. v. Buescher*, 750 F. Supp. 2d 1259, 1274 (D. Colo. 2010)). The Sixth Circuit acknowledged the tension between the two primary purposes of the NVRA, but also noted that one of the guiding principles of the law is to ensure that, once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction. *Id.* at 706; *see also* H.R. Rep. No. 103-9, at 18 (1993). The Sixth Circuit's analysis confirms that the NVRA was signed into law with the intent of securing and expanding the right to vote. Unfortunately, the Ohio Secretary of State's misapplication of the NVRA continues the pattern of denying the right to vote to communities of color.

The NVRA is clear: a State cannot begin registration removal proceedings on the basis of an individual's failure to vote in an election. Yet, Ohio adopted the voter maintenance procedure at issue in this case, known as the Ohio Supplemental Process, which does just that. *See* Ohio Rev. Code § 3503.21 (A)(7) & (B). The Sixth Circuit agreed, holding that the Ohio Supplemental Process violates Section 8, subsection (b)(2) of the NVRA. *APRI*, 838 F.3d at 712. As set forth below, Ohio's Supplemental Process follows a long line of suppressive tactics that have limited participation in the electoral process of countless Ohio voters of color. Indeed, a direct connection exists between Ohio's suppressive tactics–such as the elimination of Golden Week, voter challenges, and long lines at the polls—and the inactivity that, through the Supplemental Process, results in the removal of voters from registration rolls. *Amici* also address the impact of mail delivery on the inactivity of voters of color, which may contribute to a voter's lack of response to correspondence from the state. In sum, *amici* contend that the Ohio Supplemental Process violates the language of the NVRA and disproportionately impacts voters of color. For these reasons, *amici* respectfully request affirmance of the Sixth Circuit's decision that the Supplemental Process violates the NVRA.

## ARGUMENT

### I. OHIO'S SUPPRESSIVE VOTER TACTICS DENY THE RIGHT TO VOTE

#### A. History of Voter Suppression in Ohio

Historically, voters of color in Ohio have faced suppressive tactics that have led to voter inactivity. Ohio's voter challenge statute, Ohio Rev. Code § 3505.20, for instance, descends from laws explicit in their intent to exclude African Americans from voting. *See* Act of Apr. 16, 1868, § 1, 1868 Ohio Gen. & Loc. Laws 1st Sess. 97, 97 (L.D. Myers & Bro. 1868) ("[I]t shall be the duty of the judges of election to challenge any person offering to vote at any election held under any law of this state, having a distinct and visible admixture of African blood.").

Even after the enactment of the Fifteenth Amendment in 1870, Ohioans continued to use poll challenges that impeded and intimidated African American voters.[3] As recently as 2004, Ohio's voter challenge laws have been used to deliberately target African American and other voters of color. For example, ahead of the 2004 general election, the Summit County Board of Elections dismissed as unfounded nearly a thousand citizen voter challenges. During a hearing to address those challenges, a Board member called for reform of the citizen challenge statute

---

3. *See The Other Side: Lot Wright Shows How the Negroes Were Frightened from the Polls*, Fort Worth Daily Gazette (Jan. 16, 1885) at 5, http://chroniclingamerica.loc.gov/lccn/sn86064205/1885-01-16/ed-1/seq-5/ (describing how numerous African American voters were challenged, and one voter attacked, during a recent Cincinnati election).

asserting that it served as an artifact of Jim Crow-era discrimination. *See* Summit County Board of Elections Challenge Hearings, Oct. 28, 2004, Tr. 72:23-73-12.

### 1. Voter Challenges

While Ohio amended its challenge law to prohibit private citizens from challenging voters inside the polls in 2006, poll watchers and pre-election challenges continued to target African Americans disproportionately.[4] The vigorous use of same-day voter challenges have created long lines, delays, and confusion at the polls. *See Summit Cty. Democratic Cent. & Exec. Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir. 2004). While they do not directly deprive voters of their franchise, such challenges contribute to conditions that deter and discourage voters from turning out at the polls.

### 2. Long Lines and Poll Worker Error

Long lines and poll worker errors have also disproportionately impacted the ability of people of color to vote in Ohio. *See League of Women Voters of Ohio*, 548 F.3d at 468-69 ("Insufficient voting machines and long wait times...caused many voters to leave without voting to attend work, school, or provide care to family members. Poll workers did not inform these voters of their right to

4. *See NAACP*, 768 F.3d at 556 (listing the use of poll watchers as a recently implemented voting practice that suppresses political participation in communities of color); *see also Tea Party Group Works to Remove Names from Ohio Voter List*, LA Times (Sep. 26, 2012), http://articles.latimes.com/2012/sep/26/nation/la-na-ohio-voting-fight-20120927 (describing voter challenges aimed at African Americans in counties President Obama won in 2012).

vote by paper ballot."). In response to these problems, Ohio passed Substitute House Bill 234, which greatly expanded early voting. *See* 2005 Ohio Laws 40 (Sub. H.B. 234). With the enactment of HB 234, Ohio voters had the option of voting early via an "absentee ballot," which may be cast either EIP or by mailing the ballot to the Board of Elections. Ohio Rev. Code § 3509.05(A).

### 3. Golden Week

Further, under the 2005 early-voting scheme, the Boards of Election were required to make absentee ballots available for voters—either for EIP voting or by mail voting—no later than 35 days before the election, effectively providing a five-day window wherein Ohio voters could register and vote on the same day ("Golden Week"). *See NAACP*, 768 F.3d at 556. A large number of Ohio voters utilized the new Golden Week voting procedures. *See Obama for America*, 697 F.3d at 426 (noting that approximately 1.7 million Ohioans cast their ballots before election day during the 2008 general election, amounting to 20.7% of registered voters and 29.7% of total votes cast). Data from Cuyahoga and Franklin Counties, the two counties with the highest percentage of African American residents, suggests that early voters were disproportionately African American. *Id.* (82% of EIP votes in Franklin County were cast after hours on weekdays, on the weekend, or on the Monday before the election).

Ohio then sharply curtailed Golden Week registration and voting opportunities with the issuance of Directive 2012-35, which significantly reduced weekend voting hours, and the passage of SB 238, which effectively

eliminated Golden Week. Ohio Rev. Code § 3509.01(B)(2)-(3). The elimination of Golden Week, and the cuts to weekend and evening voting hours further burdened lower income and African American voters who are more likely to rely on public transportation and wage-based jobs, making them less likely to be able to vote in the hours permitted at the one early-voting location in each county. *See NAACP*, 768 F.3d at 539; *Obama for America*, 973 F.3d at 433 ("early voters tend to be members of demographic groups that may be unable to vote on Election Day or during the workday at local boards of elections because of work schedules."). The decision to end Golden Week significantly affected voter turnout in Black communities when the hours were cut for voting the last Sunday before Election Day.[5] Historically, Black churches, organized "Souls to the Polls" during Golden Week to transport Black voters unable to vote on Election Day due to work restrictions or who lacked transportation.[6]

The fact that reduced evening and weekend voting opportunities disproportionally affects African American voters was no secret. Discussing his vote to shorten polling hours, a member of the Franklin County Election Board commented, "I guess I really actually feel we shouldn't contort the voting process to accommodate the urban—read African-American—voter turnout machine."[7]

---

5. Zachary Roth, *After early voting cuts, Souls to the Polls takes a hit in Ohio*, MSNBC (Nov. 3, 2014), http://www.msnbc.com/msnbc/ohio-early-voting-cuts-souls-the-polls-takes-hit.

6. *Id.*

7. Darrel Rowland, *Voting in Ohio | Fight over poll hours isn't just political*, The Columbus Dispatch (Aug. 19, 2012), http://www.dispatch.com/content/stories/local/2012/08/19/fight-over-poll-hours-isnt-just-political.html.

### 4. Provisional Ballots

Provisional ballot challenges have been yet another source of disenfranchisement of voters of color in Ohio. *See League of Women Voters*, 548 F.3d at 467 (noting that 22% of provisional ballots were not counted in the 2004 general election, with the percentage ranging from 1.5% to 39.5% from county to county). Prior to the Sixth Circuit's decision in *NEOCH v. Husted*, 696 F.3d 580 (6th Cir. 2012), and the enactment of SB 216, Ohio disqualified provisional ballots cast in the correct polling location, but the wrong precinct. The state did not make exceptions for poll-worker error, even though nearly all such ballots were cast as a result of poll-worker error, such as providing the voter with a provisional ballot for the wrong precinct. *See State ex rel. Painter v. Brunner*, 128 Ohio St. 3d 17, 941 N.E. 2d 782, 794 (2011) (per curiam). This process resulted in 14,355 provisional ballots being thrown out in 2008, and 11,775 in 2010 despite having been cast in the correct polling place.[8]

Even after Ohio was required to count these so-called "right church, wrong pew" ballots, it has continued to discard provisional votes cast within the correct county, but at the wrong polling place. A report by two Ohio state legislators regarding the 2012 election determined that 9,483 ballots were thrown out as a result of poll workers directing voters to the wrong polling place (and nearly

---

8. *See NEOCH*, 696 F.3d at 585; *see also* Michael Powell and Peter Slevin, *Several Factors Contributed to 'Lost' Voters in Ohio*, Wash. Post, A01 (Dec. 15, 2004) (reporting that in the 2004 election in Cleveland, "poorly trained poll workers apparently gave faulty instructions to voters that led to the disqualification of thousands of provisional ballots and misdirected several hundred votes to third-party candidates.").

3,000 were rejected simply because the voter failed to print or sign their name in two places on the outside of the ballot envelope).[9]

### 5. Other Election Administration Errors

Other systemic failures in administering elections – which would give rise to inactive voters – are well-documented in Ohio. In 2004, for example, malfunctioning voting machines, uninformed poll workers, and malapportionment of resources in high-population-density neighborhoods all contributed to an election cycle where hundreds of voters stood in lines for up to ten hours to cast their ballots.[10] During the 2008 election, Ohio failed to offer voter registration at public assistance offices and attempted to deny absentee ballots to people with mismatching state and voting-information records.[11] In 2012, Ohio reduced the number of polling places to save on costs. This increased the number of voters in each precinct, with much of this overcrowding occurring in neighborhoods populated with people of color.[12]

---

9. Ohio Sen. Nina Turner and Ohio Rep. Kathleen Clyde, *Voter Suppression in Ohio in the November 2012 Election* (June 5, 2013).

10. Powell & Slevin, *Several Factors Contributed to 'Lost' Voters in Ohio,* Wash. Post, A01 (Dec. 15, 2004).

11. Wendy Weiser & Margaret Chen, Brennan Center for Justice, *Voter Suppression Incidents in 2008* (Nov. 3, 2008).

12. Kristen Taylor & Alexandra Eichler, *Voting Problems in Ohio, Texas According to Election Protection Volunteers,* Huffington Post (Nov. 6, 2012).

Additional errors include registered voters not appearing on voting rolls in their precincts; improper denials of requests for absentee ballots; election officials providing voters with incorrect information about polling places; early closure of polling places; poll workers sending voters away without voting contrary to Ohio Rev. Code § 3509.32, which permits anyone in line as of closing time to vote; poll workers not providing provisional ballots where necessary, running out of provisional ballots or envelopes, or never having any at all. *See League of Women Voters*, 548 F.3d at 469. All of these measures, while varied, have a similar result – disenfranchising Black voters.

### B. Ohio's History of Suppressive Voting Measures Has Led to Decreased Voter Engagement and Inactive Voters

Ohio's long history of voter suppression tactics has led to the denial of access to the ballot for many voters in the state. A 2015 Center for American Progress report ranked Ohio 37th in the nation in "accessibility of the ballot."[13] Reduced access to the ballot box has resulted in a pronounced and disparate impact on voters of color, decreasing their participation in the electoral process.[14]

---

13. Billy Corriher and Liz Kennedy, Ctr. for Am. Progress, *Preventing Problems at the Polls: Ohio* (Oct. 11, 2016), https://www.americanprogress.org/issues/democracy/reports/2016/10/11/145796/preventing-problems-at-the-polls-ohio.

14. Lauren Harmon, Charles Posner, Michele Jawando, and Matt Dhaiti, Ctr. for Am. Progress Action Fund, *The Health of American Democracies* at 12, 15, 18-19, 22, 23 (July 2015); *see also*, Joshua Field, Charles Posner, and Anna Chu, Ctr. for Am. Progress, *Uncounted Votes: The Racially Discriminatory Effects of Provisional Ballots* (Oct. 2014); Emily Badger, *Why*

### 1. A Decline in Black Voter Participation in Ohio in 2016 Reflects the Impact of Voter Suppression

In the 2016 general election, Ohio saw a decline in Black voter participation rates comparable to the national decrease in Black voter turnouts, despite overall record national turnout among total voters.[15] The 2016 election was only the second since 1980 in which the share of Black voters decreased.[16] This decrease, from 12.9% in 2012 to 11.9%, is a reversal from 2012's precedent-setting Black turnout rate, which exceeded that of whites for the first time in recorded history.[17] The decline in rate and share of

---

*Long Voting Lines Could Have Long-Term Consequences*, N.Y. Times (Nov. 8, 2016), https://www.nytimes.com/2016/11/09/upshot/why-long-voting-lines-today-could-have-long-term-consequences.html; Alice Miranda Ollstein and Kira Lerner, Think Progress, "*Republicans were wildly successful at suppressing voters in 2016*" (Nov. 15, 2016), https://thinkprogress.org/2016-a-case-study-in-voter-suppression-258b5f90ddcd.

15. William H. Frey, *Census Shows Pervasive Decline in 2016 Minority Voter Turnout*, Brookings Institution (May 18, 2017), https://www.brookings.edu/blog/the-avenue/2017/05/18/census-shows-pervasive-decline-in-2016-minority-voter-turnout.

16. Between 2000 and 2004, the share of Black voters also decreased. Recent voting rates among Latinos, Asian Americans, and Pacific Islanders have been below those of White and Black voters, ranging from 5 to 20 percentage points lower. Thom File, U.S. Census Bureau, *Voting in America: A Look at the 2016 Presidential Election* (May 10, 2017), https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html.

17. When survey non-respondents are removed from turnout rate calculations, the Black vote first exceeded White turnout

the Black turnout is noteworthy, given slight increases in the Black share and number of eligible voters.[18] The data describes lower rates of Black voter turnout as compared to Whites nationally and in numerous states, including Ohio.[19] The 2016 election findings deepen concerns about voter suppression, in light of the sharp decline of voting rates among Black voters and other voters of color, even as White voting rates increased. Moreover, the decrease in Black voter participation increases the likelihood that Black voters will be designated as inactive, which initiates removal from the voter rolls. In line with Ohio's past practices, the current procedures continue to present unfortunate barriers to voting in communities of color, in turn leading to voter inactivity.

### 2. Disenfranchisement Results in Low Voter Participation Rates in Communities of Color

Persistently low voter participation among people of color reflects a lack of equitable access to the ballot

---

in 2008. Michael P. McDonald, *2012 Turnout: Race, Ethnicity and the Youth Vote*, Huffington Post (July 8, 2013), http://www.huffingtonpost.com/michael-p-mcdonald/2012-turnout-race-ethnict_b_3240179.html.

18. "For the first time in more than a decade, the black share of voters declined, compared to the previous election—from 12.9 percent in 2012 to only 11.9 percent in 2016. This occurred despite a small rise in eligible black American voters." William H. Frey, *Census Shows Pervasive Decline in 2016 Minority Voter Turnout*, Brookings Institution (May 18, 2017), https://www.brookings.edu/blog/the-avenue/2017/05/18/census-shows-pervasive-decline-in-2016-minority-voter-turnout.

19. *Id.*

and results in perpetual exclusion from the democratic process. A process that triggers removal of voters from the registration rolls for not voting exacerbates this problem. Nationally, from the 1980s to the present, with just two notable exceptions, voter turnout rates have consistently been lower for people of color than White voters.[20]

The 2016 presidential election held consistent with the historical trend; voting rates were comparatively lower among people of color than Whites: Whites voted at a rate of 65.3%, Blacks at 59.6%, Hispanics at 47.6%, and all others at 49.3%.[21] For people of color, these rates fall below the national voting rate of 61.4%.[22] The national decline in Black voter turnout was accompanied by a decline in the total number of Black voters.[23] In Ohio, voting rates

---

20. In 2008, the voting rate among White voters was 66.1 %, Black non-Hispanic 64.1%, Hispanic 8.0%, all other 49.9%. In 2012, the rates were as follows: White 59.6%, Black 66.6%, Hispanic 48%, and other 49.9%. The higher rates of participation in communities of color in 2012 were widely associated with support for Barack Obama and excitement in the African American community about voting for the first Black president. Thom File, U.S. Census Bureau, *Voting in America: A Look at the 2016 Presidential Election* (May 10, 2017), https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html.

21. U.S. Census Bureau, *Voting and Registration of the Election of November 2016* (May 2017), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html.

22. *Id.*

23. Jens Manuel Krogstad and Mark Hugo Lopez, Pew Research Ctr.: Fact Tank, *Black Voter Turnout Fell in 2016, Even as a Record Number of Americans Cast Ballots* (May 12, 2017),

in 2016 among eligible Asian and Hispanic voters were also dramatically lower than for Whites, who registered at 72.4% and voted at 64.2%, compared to just 53.1% of Asians registered, and 46.8% who voted, while 68.9% of Hispanics registered and just 57.8% voted.[24] These low voting rates provide clear evidence that voters of color consistently participate less in elections than White voters.

Voter participation data from mid-term elections over past decades shows similar lower voting rates among communities of color. From 2002-2010, mid-term voting rates among Black voters ranged from around 42-44%, while Whites voted at 48.6% or higher.[25] This voting disadvantage is found among not only Black voters, but other communities of color as well. In the same period, 2002-2010, Latino and Asian mid-term election voting rates hovered around 31%.[26] Census reports show that in 2014, Black/non-Hispanics voted at a rate of 40.6% and Hispanics at a woeful 27% in Congressional elections,

---

http://www.pewresearch.org/fact-tank/2017/05/12/black-voter-turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots.

24. U.S. Census Bureau, *Reported Voting and Registration by Sex, Race and Hispanic Origin; from States; U.S. Census Bureau, Current Population Survey* (Nov. 2016).

25. Jens Manuel Krogstad, Pew Research Ctr., *Asian American voter turnout lags behind other groups; some non-voters say they are 'too busy'* (Apr. 9, 2014), http://www.pewresearch.org/fact-tank/2014/04/09/asian-american-voter-turnout-lags-behind-other-groups-some-non-voters-say-theyre-too-busy.

26. *Id.*

compared to 45.8% of Whites.[27] The low mid-term voter participation rates reveal that low or suppressed turnout of voters of color is a perennial issue.

In sum, this compilation of election data shows an enduring problem of inactivity at the polls by communities of color. These undeniable historical statistics suggest that voter inactivity is due to institutional challenges, not idiosyncratic factors. In part, these low participation rates are a consequence of the adoption and implementation of unfair election laws and policies, past and present, that have denied historically disenfranchised voters of color the ability to participate at national average levels or at levels commensurate with White voters. The low voting rates among voters of color is undoubtedly a result of decades of complete exclusion from the franchise, followed by a litany of voter suppression practices, carried on by the Supplemental Process at issue here.

## II. OHIO'S SUPPLEMENTAL PROCESS HAS A DISPROPORTIONATE IMPACT ON BLACK VOTERS

### A. Ohio's Supplemental Process Has Disproportionately Purged Voters of Color from Registration Rolls

Data on the removal of voters from registration rolls due to Ohio's Supplemental Process demonstrates that the

---

27. Thom File, U.S. Census Bureau, *Who Votes? Congressional Elections and the American Electorate: 1978-2014* (July 2015), http://www.census.gov/content/dam/Census/library/publications/2015/demo/p20-577.pdf.

measure disproportionately affects voters of color. These voters are routinely removed from the rolls in higher percentages than their White counterparts.

For instance, one study found voters in certain neighborhoods in the three most populous and diverse counties in the state were up to 200% more likely to be removed from voting rolls as a result of the Supplemental Process.[28] Hamilton County presents a grave contrast: African-American-majority neighborhoods in downtown Cincinnati had 10% of their voters removed due to inactivity, compared to only 4% of voters in a suburban, majority-white neighborhood.[29] A similar pattern appears in Ohio's two other large, urban counties. In Cuyahoga County, which includes Cleveland, 5 percent of voters in neighborhoods in which President Obama received 60 percent or more of the vote in 2008 were removed. By contrast, only 2.5 percent of voters were removed in neighborhoods where President Obama received less than 40 percent of the vote. Even Ohio's capital was not immune. In Franklin County, home of Columbus, 11 percent of voters in Democratic-leaning neighborhoods have been removed for inactivity since 2012. Yet only 6 percent of voters in Republican-majority neighborhoods were removed.[30]

---

28. Andy Sullivan and Grant Smith, *Use it or Lose it: Occasional Ohio Voters May Be Shut Out in November*, Reuters (June 2, 2016), http://www.reuters.com/article/us-usa-votingrights-ohio-insight/use-it-or-lose-it-occasional-ohio-voters-may-be-shut-out-in-november-idUSKCN0YO19D (hereinafter "Reuters Report").

29. *Id.*

30. *Id.*

Placed within this context, it is not surprising that Ohio's efforts to purge voter rolls have fallen disproportionately on voters of color. The five largest counties in Ohio contain nearly 73 percent of all African Americans living in Ohio, and these large counties have been the disproportionate target of voter purges. One analysis found that Ohio's twenty most populous counties had purged more than 200,000 names from voter roles for inactivity in 2015 alone, and that Ohio's single largest county, Cuyahoga, accounted for more than 25 percent of these purges, or nearly 52,000 names.[31] Investigators have also noted that in Hamilton County, African American neighborhoods near downtown Cincinnati have had more than ten percent of the registered voters purged for inactivity since 2012, while in the more affluent (and whiter) suburbs that ring the city, only four percent of voters have been purged due to inactivity.[32]

In sum, Ohio's purge process is yet another barrier, in a long history of hurdles, to participation in the electoral process by voters of color.

### B. Ohio's Supplemental Process Is Based on a Faulty Correlation Between Voter Inactivity and Voter Change of Address

Ohio's Supplemental Process wrongly equates not voting with a change of address. The Secretary of State

---

31. Hannah Yi, Mori Rothman and Chris Bury, PBS Newshour, *Why Ohio has purged at least 200,000 from the voter rolls* (July 31, 2016), http://www.pbs.org/newshour/bb/inside-ohios-fight-voting-rules.

32. *See* Reuters Report.

submits that "[Ohio's Supplemental Process] 'seeks to identify electors whose *lack of voter activity* indicates they may have moved, even though their names did not appear' in the change-of-address database."[33] As explained above, Ohio's history of voter suppression mechanisms has led to high levels of inactivity among voters of color. Moreover, the state provides no evidence that "not voting for 2 years" is a reasonable proxy for "having moved out of one's voting jurisdiction." And the NVRA and HAVA statutes prohibit any assumption that lack of voter activity equates to a change of address for triggering voter removal from registration rolls. While certainly *some* voters have moved, Ohio offers no substantiation for a generalization that voting activity or inactivity bears any direct, cause-or-consequence, or implied relationship with their moving or remaining at their address.

Numerous factors may contribute to a voter missing an election, including: schedule conflicts, inability to get off work, forgetfulness, lack of transportation to the polls, being out-of-town, sickness, dissatisfaction with candidates, apathy, etc.[34] By using "not voting" as the trigger for removal, and given the historic over-representation of voters of color among those not voting, this process inevitably impacts voters of color disproportionately. Given this community's lower turnout

---

33. Petition for *Writ* of *Certiorari* at 10 (citation omitted).

34. *America Goes to the Polls 2014*, Nonprofit Vote, http://www.nonprofitvote.org/documents/2015/03/america-goes-polls-2014.pdf; *see also* U.S. Census Bureau, *Voting and Registration in the Election of November 2016*, Table 10, Reasons for Not Voting, by Selected Characteristics: November 2016 (May 2017), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html.

rates, the Supplemental Process has and will continue to result in disproportionately higher removal rates of Black voters.

Indeed, Ohio's Supplemental Process perpetuates the problem of low turnout, leading to greater inactivity. In 2016, analysts found the "largest barrier to voting" is related to proper registration.[35] The Ohio Supplemental Process exacerbates this problem by adding an administrative burden and *removing* voters who have already managed successfully to register. Again, voters of color are disproportionately impacted. By adding this removal process to the ongoing challenge of comparatively lower registration rates, Ohio creates yet another impediment to voters of color to remain registered and vote.[36]

### C. The Supplemental Process's Mail Response Requirement Disproportionately Places Voters of Color on the Inactive List

The Supplemental Process requires that registered voters who are placed on the inactive list take an additional action—respond to a confirmation notice via U.S. mail—in order to stay on the rolls. While use of the mail to provide notices is prescribed under the Help America Vote Act of 2002 (HAVA) and the NVRA, the evidence related to use of mail suggests that the addition of a mail voter response

---

35. *America Goes to the Polls 2014*, Nonprofit Vote, at 19.

36. "In 2016 in the United States, the voting rate for Non-Hispanic Whites was 65.3% while only 59.4% of Blacks and 47.6% of Hispanics voted." U.S. Census Bureau, *Voting and Registration*, https://thedataweb.rm.census.gov/TheDataWeb_HotReport2/voting/voting.html.

requirement for registered voters has an especially harsh impact on voters of color. Mail response and return rates suggest that non-white racial groups return mail at rates lower than the national total and are under-represented in mail returns when compared to their race's percentage of total households in America.[37] As one study explained, "[w]hen Hamilton County, Ohio, where Cincinnati is the county seat, removed 75,000 voters this year, nearly half, and in some neighborhoods far more, were purged because of 'non-response' [. . . and there was a] connection between the poverty rate and racial composition of ZIP codes in the county and the purge rates of registered voters."[38]

Further, a study conducted in 2000 on jury summonses, which are sometimes generated using voter registration rolls, supports the assertion that communities of color fail to receive mail at rates higher than whites.[39] Similarly,

---

37. Compared to the national rate of 79.3% and the rate for Whites of 82.5%, the mail return rates for other households by race are: Black (70.0%), Asian (75.4%), American Indian and Alaska Native (69.8%), Native Hawaiian and Other Pacific Islander (59.7%), Some Other Race (56.2%), Two or More Races (71.7%). Black householders made up 12.1% of all householders, but only 10.7% of mail returns, Asian householders made up 4.1% of all householders, but only 3.9 % of all mail returns, and Some Other Race householders made up 4.2% of all householders, but only 3.0 % of all mail returns. Earl Letourneau, U.S. Census Bureau, Mail Response/Return Rates Assessment (2012) at 23-24, https://www.census.gov/2010census/pdf/2010_Census_Mail_Response_Return_Rates_Assessment.pdf

38. Emily L. Mahoney, Hillary Davis, and Jimmy Miller, Ctr. for Public Integrity, *America Scrubs Millions from the Rolls. Is it Fair?* (Aug. 22, 2016), https://www.publicintegrity.org/2016/08/22/20079/america-scrubs-millions-voter-rolls-it-fair.

39. Robert Walters and Mark Curriden, *A Jury of One's Peers?: Investigating Underrepresentation in Jury Venires*, 43 Judges'

Black neighborhoods experience a higher percentage of undeliverable-as-addressed (UAA) jury summonses than White suburban areas.[40] Studies have also found that UAA summonses disproportionately affected households earning less than $35,000[41], and that mail delivery in general is less reliable in urban areas, like Ohio's largest cities, Cleveland, Cincinnati and Columbus, where people of color are more likely to live than whites.[42]

These studies show that the Supplemental Process, which requires voters to respond by mail to confirm their addresses in order to stay on the voter rolls, disproportionately results in the removal of voters of color.

## III. OHIO IS NOT ALONE IN ITS VIOLATION OF THE NVRA

Ohio's unnecessary supplemental process has made it, as one State representative said "the number one purger of voters in the country."[43] But unfortunately, Ohio

---

Journal 17, 19 (2004); Ted Eades, *Revisiting the Jury System in Texas: A Study of the Jury Pool in Dallas County*, 54 SMU L. REV. 1813, 1815 (2001).

40. Peter S. Canellos, *In Prosecuting Federal Crime, Jury Pool can be an Issue of Race*, Boston Globe (Sept. 20, 2005), http://archive.boston.com/news/nation/washington/articles/2005/09/20/in_prosecuting_federal_crime_jury_pool_can_be_an_issue_of_race.

41. Eades, *Revisitng the Jury System in Texas*, at 1815.

42. John P. Bueker, *Jury Source Lists: Does Supplementation Really Work?*, 82 CORNELL L. REV. 390, 425 (1997), *citing United States v. Ortiz*, 897 F. Supp. 199, 204 (E.D. Pa. 1995).

43. Jackie Borchardt, *Ohio lawmaker wants the state to stop purging inactive voters*, Cleveland.com (Dec. 2, 2015), http://www.

is not the only State failing to comply with the NVRA. Ohio is only one of several States across the country that undertake the extra—and unlawful—supplemental process, which punishes its citizens for not voting.[44] States such as Oklahoma, Tennessee, Georgia, and Hawaii impermissibly use a voter's lack of participation to initiate the voter-removal process. Several of the NAACP's State and State-Area Conferences have initiated litigation to protect the rights of voters to remain on the rolls. Tennessee and Georgia have similar statutes.[45]

Georgia developed a *mandatory* secondary system of removing voters from its rolls for failure to vote, while permitting, but not requiring, the State to use the NVRA's voter-removal procedure that relies on Postal Service information. *Cf.* O.G.C.A. § 21-2-234(a) (mandatory unlawful voter-removal scheme); O.G.C.A. §21-2-233 (lawful, permissive voter-maintenance program). Deval Patrick, the then-Assistant Attorney General for Civil Rights, sent a letter to the State of Georgia in 1993 outlining

---

cleveland.com/open/index.ssf/2015/12/ohio_lawmaker_wants_the_state.html

44. Notably, many of these states would have been covered under Section 5 of the Voting Rights Act of 1965, and they have high concentrations of African-Americans and other communities of color, impoverished persons, and students.

45. Georgia's unlawful procedure is described more fully below. Tennessee's procedure is codified at T.C.A. §2-2-106(c) (2010) ("The county election commission shall also follow [address verification] process if indications exist that the voter may no longer reside at the address at which the voter is registered, *such as the voter's failure to vote*, or otherwise update the voter's registration over a period of two (2) consecutive regular November elections.") (emphasis added). *See also Common Cause and Georgia NAACP v. Kemp*, No. 17-11315 (11th Cir. June 5, 2017).

the NVRA's prohibition of using a person's failure to vote as a starting process for voter roll maintenance. Georgia not only continued using it, but made it mandatory. Under this improper law, this mandatory purge process is triggered solely by an individual's failure to vote in previous elections. Even though Georgia is on notice that the NVRA specifically prohibits removal based on failure to vote, it continues to enforce the law. Through this impermissible process, Georgia removed over 370,000 voters from its rolls between 2012 and 2014.[46]

Similarly, pursuant to Hawaii Revised Statutes §11-17, if a person has not voted in the last two general, primary, or special elections, that person is removed from the rolls.[47] Hawaiians are not warned that they may be removed, and no confirmation notice is sent. The registrar simply strikes those persons from the rolls. Notably, the NVRA's prescribed method of cleaning voter rolls is the *secondary* plan used by Hawaii. As of 2014, Honolulu's election director alone removed 30,000 to 40,000 voters from the roll *each year* after an election.[48]

Upholding the Sixth Circuit's ruling would prevent States from enacting new legislation that violates the NVRA, and would create a uniform, nondiscriminatory method of maintaining voter rolls—as Congress intended.

---

46. *See* U.S. Election Assistance Commission Report to the 114th Cong.: *The 2014 EAC Election Admin. and Voting Survey Comp. Rept.* 106 (June 30, 2015).

47. Hawaii Rev. Stat. §11-12 (2016).

48. Nathan Eagle, *Should Hawaii Purge More People from List of Registered Voters?* Civil Beat (Oct. 20, 2014), http://www.civilbeat.org/2014/10/should-hawaii-purge-more-people-from-list-of-registered-voters/.

## CONCLUSION

Ohio's Supplemental Process is the most recent hurdle in a long road of barriers to voters of color voting in the State of Ohio. These impediments have disproportionately impacted the rights of voters of color and led to voter inactivity in communities of color. Pursuant to Ohio's Supplemental Process, these voters are vulnerable to being purged improperly from the registration rolls based solely on inactivity, which violates the letter and spirit of the NVRA. Accordingly, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

MARTIN L. SAAD
KATHLEEN K. SHERIDAN
JOHN C. VAZQUEZ
CHRISTOPHER N. MORAN
VENABLE LLP
600 Massachusetts Avenue, NW
Washington, DC 20001
(202) 344-4000

BRADFORD M. BERRY
JANETTE M. LOUARD
KHYLA D. CRAINE
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215
(410) 580-5624

GILDA R. DANIELS
*Counsel of Record*
JUDITH BROWNE DIANIS
DONITA JUDGE
EILEEN MA
ANDREW HAIRSTON
ADVANCEMENT PROJECT
1220 L Street, NW, Suite 850
Washington, DC 20005
(202) 728-9557
gdaniels@advancementproject.org

JAMES WORKMAN
H. LEE THOMPSON
OHIO STATE CONFERENCE
OF THE NAACP
P.O. Box 29014
Columbus, OH 43229

*Counsel for Amici Curiae*

September 22, 2017